

Friday, 22 November 1946

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INTERNATIONAL MILITARY TRIBUNAL  
FOR THE FAR EAST  
Chambers of the Tribunal  
War Ministry Building  
Tokyo, Japan

PROCEEDING IN CHAMBERS

On

Paper No. 564 - Re: presentation of  
testimony of Major deWeerd by means of a written  
statement instead of by oral examination.

Before:

HON. SIR WILLIAM WEBB,  
President of the Tribunal and  
Member from the Commonwealth  
of Australia.

Reported by:

JACK GREENBERG  
Chief Court Reporter  
IMTFE

Appearances:

FOR THE PROSECUTION SECTION:

MR. W. G. F. BORGERHOFF MULDER, Justice,  
Associate Counsel, acting on behalf  
of the Kingdom of the Netherlands;

MR. SOLIS HORWITZ;

MR. A. T. LAVERGE.

FOR THE DEFENSE SECTION:

Mr. WILLIAM LOGAN, Jr; Counsel for the  
accused KIDO, Koichi

MR. OWEN CUNNINGHAM, Counsel for the  
accused OSFIMA, Hiroshi

MR. G. F. BLEWETT, Counsel for the  
accused TOJO, Hideki.

FOR THE OFFICE OF THE GENERAL SECRETARY, INTIE:

EDWARD H. DELL, Judge,  
Legal Adviser to the Secretariat

MR. CHARLES A. MATNZ, Clerk of the Court

MR. H. W. DELANY, Deputy Clerk of the  
Court.

The proceeding was begun at 1315.

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THE PRESIDENT: This is paper No. 564, the application by the Dutch prosecution to have the evidence of Major deWeerd taken in the form of a statement.

I cannot say that I have read the whole of the statement, but it does appear to me to be a general survey of the conduct of the Japanese in the Dutch possessions. It is not really directed to war crimes, and only so far as it is is it really evidence.

It seems to me, General, it is desirable to make from that report a statement confined to what you claim to be war crimes within the Charter. That should not take long to prepare. My colleagues expect me to put that proposition to you. They do not want to have the case overloaded with matters which clearly have no bearing on any issue. To discover, really, what is material, one has got to read the whole of that statement only to discover that the material part is only a fraction of the whole.

So, we see good grounds for the defense's objection to the statement as it stands. But, we do not want to delay matters. It will be sufficient if you go through it and pick out those things which

you really think can be placed before the Court as evidence of war crimes.

We quite understand that the Geneva Convention and the Hague Convention, and the other Conventions, not only protect soldiers but protect civilians in their persons and in their property, but it does appear to me that you have gone right beyond those matters, that is, the scope of the protection afforded by the Conventions.

It is a most interesting account and splendidly written, if I might say so. However, although it is a very important historic document, as evidence it is probably more than you can ask the Court to accept.

You can give your views on that, General.

MR. JUSTICE BORGERHOFF MULDER: Well -- go ahead, Mr. Hyde.

MR. HYDE: Your Honor, I was just going to make this observation: that this document sets forth exactly what happened to show what the intentions of the Japanese were. They went into this area and just superimposed Japan and Japanese institutions on these people, indicating not that it was a temporary affair but that this was intended permanently; they were going to take it as theirs. This

document shows in detail what happened in that respect.

THE PRESIDENT: Even so, you could put in a short statement exactly what they did in that regard.

MR. HYDE: Well, it was our feeling that, in order to show how they intended -- what they intended and how permanent it was to be, that that could best be demonstrated by showing the ultimate that they went in detail of imposition of their institutions and their ideals upon these people.

THE PRESIDENT: I think you could allege it and give some evidence of it without going into the extent that you have in that report.

MR. LAVERGE: The point is, your Honor, that the Indictment charges that it was a conspiracy to gain military, political and economic domination of the whole of East Asia and that this document is considered by the prosecution essential to show to what extent they went in executing that aim of theirs. That has not been shown up until now with any detail, I may say; and most of the proof that has been brought into Court is how Japan prepared for an aggressive war; but how, once an aggressive war had started, they went on to get hold of the great part of the world and make that part of the world subservi-

ent to Japan has been the question which has been left open until now. And the prosecution has deemed it necessary to prove their whole case, to finish up the case, with showing exactly what they did once they had conquered these territories which they had occupied through what we say is "aggressive war."

THE PRESIDENT: Well, I think, even so, you could summarize that document and get in all that the Court could be reasonably asked to consider. I will not say in half that compass. We have got to cut down the amount of time we are spending on this case -- unnecessary spending on it.

MR. LAVERGE: Yes, your Honor, but it wouldn't take more than a day to read this report anyway; and it is very hard to show exactly what the Japanese did unless you go into some details as to the actual measures they took in every field of life. We can allege, as you say, that they did make this into a sort of new Japanese colony; but, to prove it, we have to go on to show what they did in the military, economic and religious and social fields.

THE PRESIDENT: Well, I think I will go through the report myself and strike out the things

that I think should not be in it. I should not do it; but, to save time, I am prepared to go a long way. That is going a long way, but we are going to save time. There are a lot of conclusions in that report which my colleagues will disregard. You need not worry about that; they will disregard all conclusions.

MR. HORWITZ: That raises an interesting point: On the one hand there is an objection to the conclusions by the Members of the Tribunal; and we understand very well the reason why such objections come up. Then there is objection to the detail. If you leave out the detail, you are left with the conclusions. So, we are faced with the dilemma: how are we going to write this thing, and how are we going to prepare the evidence even if it is oral? That is the dilemma of the whole situation.

If we put in the detail, you can very well afford to say you are ignoring the conclusions because the detail then permits the Court to make its own conclusions. However, if the Court says, "Leave out the detail" and then says at the same time that "we will ignore the conclusions," then the thing is --

THE PRESIDENT: I say you can summarize

the facts. I did not say you can summarize the conclusions.

MR. LAVERGE: I think it will be very hard to summarize the facts.

THE PRESIDENT: I think I will make an attempt. I am taking on a big responsibility, but I think I will make an attempt. I hate doing it. It is the wrong thing for me to prepare the prosecution's case, but I have to do something. The prosecution are not prepared to do it, so I may have to do it to save the time of the Court.

MR. CUNNINGHAM: May I bring up another matter now, your Honor?

THE PRESIDENT: Yes.

MR. CUNNINGHAM: At the beginning of the trial you used to open with an opportunity for the counsel to bring up any matters that might be brought up before the Tribunal. And since, oh, for some long time, it has not been suggested that way, I wonder if I could have a renewal of that because there are some matters which come up which probably should be at least reopened a little for the counsel, maybe, who are not there at the time the matter was discussed or who would like to reopen a subject who have a different light on the thing.

Now, take, for example, this cross-examination rule that was made. I am convinced -- at least I feel that it has not been explored or has not been presented to the Court in toto, only piecemeal. And I feel like Mr. Smith did about that rule, that it is really an error to apply it; and I would like to have an opportunity some time to argue the thing fully from my point of view, and I know several other counsel would because it is just for one reason: We think -- I think, in violation of the Charter.

THE PRESIDENT: We will not review that. Whether right or wrong, we will not. We will have to stand on our decision.

MR. CUNNINGHAM: I gave you my reason for asking this privilege, not on this particular instance but the other. You see, we are faced with the proposition that there is no appeal from the decision, and it would give an opportunity to, at least, maybe, argue the proposition to a full hearing on it. That's the only thing I had in mind about the thing.

THE PRESIDENT: No decision will be opened.

MR. HORWITZ: Mr. President, going back to this report for a moment.

THE PRESIDENT: Yes.

MR. HORWITZ: The prosecution does not wish to impose any burden, either upon the Tribunal as a whole or upon the President, of preparing this document. We are not at all clear, however, as to just what the Tribunal might think is unessential in this document. If the Tribunal could indicate to us in a general fashion the parts they believe to be unessential, we will attempt ourselves to bring this document within the desires -- within the contention and desires of the Tribunal.

We just wish to be on grounds where there is a meeting of minds and clarity as to just what the Tribunal regards as unessential because we have looked upon this from one point of view, regarding the Charter and regarding the allegations in the Indictment. If the Tribunal feels that there is a certain portion of it which is unessential, we will be glad to redo it along the lines that the Tribunal suggests, eliminating those parts which the Tribunal feels has no bearing on it or not too much weight upon the case.

THE PRESIDENT: Confine it to statements of fact. Confine it to matters which are relevant to issues. Do not repeat evidence; avoid repetition. You may give the names of persons if you like.

Where several people deposed to the same episode, well, you can name them. I cannot give any further directions on that, Mr. Horwitz.

MR. HORWITZ: No. I just thought, in light of this particular document, your Honor, I have not had a chance to read this document fully yet, but we are perfectly willing to undertake the task of meeting the Court's desire along that line.

THE PRESIDENT: Well, that is all I can indicate. If I set out to revise that, I would be guided by what I just said. I have nothing else to guide me. You may exercise a little more judgment than I could because you are the prosecution; you are presenting the evidence.

You had better try to reduce the amount of the material in accordance with that direction. If you fail to do so, then I probably will be inclined to let you present the document leaving the defense the right to cross-examine. But, I will do that with great regret, and so will my colleagues, if they agree.

You could take a stand with a firm attitude; and, as Mr. Williams said, you can present that as a report, an investigation, leaving the defense with only the right to cross-examine. But, that would

not help the Court very much; it would waste a lot of time; it would not be very helpful to us.

MR. HORWITZ: I think I know what to do with this.

THE PRESIDENT: I will adjourn the matter for further consideration.

(Whereupon, at 1328, the proceeding was concluded.)

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